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POLITICAL OPINIONS.

BY A CITIZEN OF THE UNITED STATES.

*A truth clothed in apt words,
Is an armed soldier, going forth to victory.*

CHICAGO:

E. B. MYERS & CHANDLER,
LAW BOOKSELLERS AND PUBLISHERS.

1865.

INTRODUCTORY NOTICE

Prepared for the Publishers by a distinguished Jurist.

WITHOUT committing myself to all the propositions enunciated in this pamphlet, I yet regard it, as a whole, as a production of rare merit, as well from the crystal clearness of its style, as from the profound thought and patriotic feeling which it evinces on every page. Such discussions are greatly needed at the present time.

The war of arms is happily ended; but that of ideas rages still. The sword has done its work, and now the pen must resume its functions. And fortunate, truly, will the country be, if it show sufficient wisdom to welcome calm argument, and candid investigation, conducted in the tone of this temperate essay addressed to the intellect, in preference to the usual political appeals to the lowest passions, and meanest prejudices of human nature.

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In the Clerk's Office of the District Court of the United States for the Northern
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POLITICAL OPINIONS.

I.

SOVEREIGNTY NOT IN THE PEOPLE, BUT IN THE LAW.

The law alone, is supreme. It governs alike majorities and minorities—the states and the nation. The people never govern. They only choose the ministers of the Law, which is over all. If the law did not control majorities, the Republic could not endure. The invisible sovereignty of the Law, bears the same relation to the state, that the Invisible Deity does to the church.

II.

THE DISTINCTION BETWEEN NATURAL RIGHTS, AND
POLITICAL RIGHTS.

Natural rights come by birth; Political rights by the civil law. As to natural rights all persons are born free and equal; but no one can have any political rights, except such as are conferred by the Sovereign Political Authority.

Political rights are given, not by any abstract rule of right and wrong, but from sound discretion, as seems most conducive to “the greatest good of the greatest number.”

The right to life, food, and the orderly use of one's

faculties, comes by birth ; but no one can have by birth a right to vote or hold office. The rule that native white men vote at the age of twenty-one years ; that women do not vote at all ; that foreign-born residents may vote after a certain probation and certain ceremonies ; and that the suffrage is altogether denied to Indians and negroes, has nothing to do with natural rights. The sovereign authority deemed it wise to establish this rule, it may see fit to change it ; but whether the old rule be adhered to, or a new one be adopted, has as little to do with the "inalienable rights of man," as the appointment of a minister to the court of St. James. Either all human beings have a natural right to vote, without regard to age, sex, race or condition, or no one has such right, except it be conferred by law.

III.

THE DIGNITY OF OFFICE—THE POPULAR ERROR.

In the Republic, all honors and powers belong to the offices established by law, and not to the men by whom the office may happen to be administered. The emperor of France, is himself the government. The president of the United States is only the executive hand of the Law.

Within the last thirty years, the American people have gradually lost sight of the distinction between the office, which is incorruptible, and the office-holder who is sometimes the contrary, and have included both in their derision and contempt.

This was a popular crime, and the just punishment follows inexorably in its train. The office-holder in the United States is, for the time being, invested with a por-

tion of the power and dignity of the Republic, and ought, for the sake of the office, to be respected accordingly. As a man you may despise him, but as your superior in the state, you should do him reverence in his official character. To act otherwise is to disgrace, not the office-holder, but your country.

One of the first steps toward the restoration of the Republic, is to restore in the hearts of the people, a sincere respect for the offices through which their government is administered.

IV.

COMPENSATION FOR PUBLIC SERVICE.

The principal who cheats his employees out of half the value of their service, will drive honest and capable men out of his employment, and induce others to enter it who will persuade themselves that it is, at least, excusable to make cheating even, by cheating.

No more cunning or successful scheme for prostituting the government to base purposes, was ever devised by the wit of demagogues, than, under the honest-sounding watch-word of "economy in public affairs," to reduce the compensation for public service so low that competent and faithful men cannot devote their undivided time and ability to the public business.

The success of this scheme rapidly drove the integrity and talent of the country into the management of private corporations, commercial ventures, and manufacturing enterprises, in which industry could provide for the maintenance of families, the education of children, and the comfort of old age.

But the experiment has been fully tried. The accursed rule of "Poor pay and the stealings in," including every species of indirect plunder to make up the deficiency of wages, has been substituted for the good old maxim that "the laborer is worthy of his hire," and retained till the extent and number of official corruptions have become absolutely appalling.

The ancient rule must be restored. The compensation for public service must be such that it will be an inducement to the highest order of ability to devote itself to the promotion of the public good. The salary of each office should enable the holder to support a respectable position in society, and accumulate something for the "rainy day" which every one ought to anticipate. There is no such thing as reducing salaries below the acceptance of knaves; the only recourse is to elevate them to the acceptance of honest men.

Finally, every man who shall have served his country well, in any high office, must be provided for life, with a sufficient pension to support a family decently. For it is monstrous to turn a President or a Senator out of a more than imperial office to earn the support of his household by common toil.

V.

THE NUMBER OF OFFICES AND THE LENGTH OF OFFICIAL TERMS.

He who takes a public office, ought to lay aside all other absorbing cares, and devote his best energies to the public service. If he has been engaged in other business, he should so far give it up that it will not prevent him

from rendering the best and highest service to his sovereign. Therefore, a sufficient amount of duty should be required of the incumbent of each office, to sufficiently occupy his time, and require his abilities. And the official term should be sufficiently long to warrant a citizen in giving up a lucrative business, and enable him to master all the difficulties of the situation, and give the public the benefit of his schooling and experience, and acquit himself with that honor which every right-minded man esteems.

An infinite reform would be wrought by dividing the whole number of public offices by three, and multiplying the terms and the salaries by the same number. The effect on the American Congress would be equally happy and astonishing. It has become impossible for Congress to deliberate: it can act with its present numbers, only like a board of supervisors, through committees whose chief business is to shirk personal responsibility, cover up the common ignorance and incompetency, and build bridges for the passage of every species of legislative speculation.

VI.

EXECUTIVE APPOINTMENTS TO OFFICE.

The proper filling of offices by executive appointment, is impossible under the present system. The theory of the government is, that officers appointed by or under the direction of the President, will be selected without reference to the petty local interests and prejudices, which more or less affect every community. As things now are, this theory is not realized once in a thousand

times. Nearly every such appointment is controlled by "a ring;" and though a citizen were wiser than Solomon, and more just than Aristides, and though in addition to that, four-fifths of the community should desire his appointment, he would have no more chance than "the man in the moon" of receiving the office.

The remedy for this infinite evil is simple. Let Executive Commissions be created once in four years, to sit at the capital of each State, and hear, and in the first instance decide upon, all applications for appointment to, or removal from any executive office. Require all applications to be in writing, and to be filed in the office of a United States clerk or other proper officer, a reasonable time for inspection and remonstrance, before the sitting of the commission. Cause a calendar to be made, and every application to be entered upon it, and make a timely publication of that calendar in a public newspaper. Let the majority of the commission be citizens of other States than that in which they are to act. Have the hearing public and summary, and allow no appeals from their decision except in cases of forgery or fraud.

The government must cease the practice of sending abroad, as representatives of the United States, men destitute of that knowledge of foreign affairs, and general political history, without which the consul, or it may be a higher officer, appears like a fool, and disgraces his country accordingly.

VII.

THE NEGRO AND THE SUFFRAGE.

As a race, negro men are incapable of attaining the average intelligence and ability of American white men, twenty-one years of age. The negro therefore exists in a state of perpetual minority. He may be made free, but he cannot become a citizen.

But if he were ever so intelligent, he would have no *right* to citizenship. Even our American women, as intelligent, cultivated and lovely as any in the world, are not made citizens, because the Sovereign Power of the country does not deem it wise to impose upon them the burdens of citizenship.

The right of suffrage has been already too much extended. The duties of an American Citizen are too great and too sacred to be performed by every member of the human race. The privilege of naturalization has been frightfully abused. And this abuse has created in the towns and cities of the country large numbers of voters who are confessedly and notoriously used by artful demagogues to control elections, elevate unworthy men to office, and secure the passage of unwise or corrupt measures.

The naturalization laws may be well enough, but the administration of them has become, to use an army phrase, terribly demoralized. Naturalizations are made by wholesale, and he must be a wretched foreigner indeed, who cannot procure "naturalization papers" under present practices.

The fathers of the Republic thought a property qualifi-

cation of the suffrage wise. Not that every man fit to vote would have the specified amount of property, but that as a general rule, men who were honest, industrious and intelligent enough to vote, would accumulate at least the required amount of property. The foundation of the rule was this—the law protects both the person and the property; therefore both the person and the property should be represented by the suffrage. The experiment has been tried, but no respectable statesman will hazard his reputation, by a declaration that the abolition of the property qualification has benefited the country.

VIII.

THE ELECTION OF EXECUTIVE AND JUDICIAL OFFICERS.

The supreme burlesque on republican government, was the selection of judges and sheriffs by popular vote. The true doctrine is, that those who enact the laws, shall be freely selected by the voice of the majority; and shall be answerable directly to the people for the proper discharge of their duties. In other words, the legislator is a representative. But though the *legislator* may be called a *servant* of the people; the *law*, to which he gives form, is, and ought to be their *master*. It should govern alike those who opposed and those who favored it—the minority and the majority. Executive and judicial officers are *its ministers*,—not representatives of the people. Neither executive nor judicial power can justly be representative. In the exposition and execution of the law, the popular prejudices, caprice and clamor, ought to be no more heeded than the wail of the wind, or the moan of the sea. Therefore candidates for executive or judicial office,

should not be compelled, or permitted, to run round their districts, begging or buying the votes of every malefactor whom it may be their duty to consign to the penitentiary ; but all such officers should be so selected and appointed, as to be independent, not of the law, but of the community over which they are to administer the law. If the law be not satisfactory, it may be changed in the authorized mode ; but while it stands, its ministers should command and enforce obedience.

If any doubt these doctrines, let them look over the political history of the last twenty years. There is not one of the innovations which are here condemned, that has not worked the injury of the honest, industrious, intelligent and worthy ; and the encouragement and promotion of every class of political knaves and vagrants. And it is the poor, not the rich, who suffer most heavily from these subversions of the true principles of the government.

IX.

THE TRUE SYSTEM OF BANKING.

One extreme naturally follows another, and the mean between two opposite extremes, is commonly right. The first extreme was a national bank, corrupting the government. The second extreme was an indiscriminate wild-cat state bank system, impoverishing the people. The mean between these opposite extremes of the centralization and the diffusion of financial power, is a national currency, under a national law, secured by private property, and conducted by private enterprise, under the supervision of fit ministers of the law. The issue of

currency by state banks should be prohibited by law. Productive securities, such as interest-paying bonds, and real estate that will command good rents, should be furnished, recorded, and put within the power of the United States courts in the judicial district where the bank is located, and at the national capital. Suitable penalties should be provided as well against the misuse of deposits, as for the non-redemption of bills; and the judges should be required to charge their grand juries, at least four times in each year, to diligently inquire into and true presentment make, of all violations of the banking law, which should be given them in charge, or otherwise come to their knowledge. Instead of creating an army of new office-holders, the enforcement of the banking law should be committed to the present judicial and executive officers of the government. Let every citizen have in his own judicial district, a record of securities deposited at the national capital, a grand jury, prosecuting attorney, judge, petit jury, and marshal, to enforce a sufficient law, and there need be little fear of any considerable losses. Under such a system, honest, able and prudent bankers would thrive, and their bill-holders and depositors prosper.

X.

INTER-STATE RELATIONS AND COMMISSIONERS.

No one is fit to hold any great office, either state or national, who has not traveled through the most important sections of the Republic. Travel, contact with the people in different localities, actual knowledge by personal observation, of the wants and advantages of many communities,—these things are essential to cosmopolitan ideas.

The trouble with too many of our office-holders, especially with members of Congress, is, that they know too little of the country outside of their own districts. The want of this knowledge makes men narrow-minded, prejudiced and contemptible.

These states are not insignificant provinces, they are empires, and the Great Republic is in strictness entitled to be called the Empire of Empires, and the government of the states and the nation must be comprehensive, liberal, and grand, accordingly.

The American Congress should, from time to time, make a tour of the country in a body. They would in this way spend the people's time and money to much better purpose than they oftentimes do.

The legislatures of the different states should, from time to time, entertain the legislatures of other, especially the more remote states; and each state should keep at the capitals of some, if not all of the other states, a High State Commissioner, to disseminate among the people whatever information might lead to, or increase commercial intercourse between the people of the different states; or to the opening of new markets for produce and manufactures; or to inducing the immigration of such classes as can be spared from one, and are needed in the other state; and to promoting such distributions and investments of capital as the wants of the country require.

These things inaugurated and continued for a period of ten years, would repay incalculably the expenses they would require.

XI.

THE ENCOURAGEMENT OF AMERICAN GENIUS.

A system should be perfected for offering a regular annual list of honors and rewards for the highest achievements in agriculture, commerce, manufactures, science, art, and literature. The effect of such a system in developing the powers of the American people, would be wonderful. It would be equal to hunting through the country with a lantern, to find fit persons for places of honor, trust and profit. It should embrace everything that makes a nation great. It should be so arranged that it would give the state and national governments, year by year, the names of the volunteer contributors to every branch of business and occupation, so tested and classified as to be available for practical purposes. Every aspirant for honest fame might try his fortune here. Essays on our foreign relations, would show who possessed the proper qualifications for foreign appointments; articles on the practical administration of powers and offices, would show who might be prudently entrusted with such administration; literary and scientific efforts would show the names, residences, and abilities of those from whom philosophers, historians, poets and teachers might be selected.

The grand advantage of this system would be, that place and station would make no difference between competitors. The shoemaker on his bench could compete with the cabinet officer in his department; the farmer's son by the country fireside, could enter the list, and contend for the honors, with the son of the millionaire in the university.

The name and the effort of every one whose endeavor should display more than common ability, should be preserved for future use. Graded honors should be given to all whose productions should exhibit a high order of talent; and for the best, reasonable rewards should be bestowed.

XII.

THE LIMITS AND RELATIONS OF THE GREAT POWERS OF GOVERNMENT.

To allow power to define its own limits, and declare conclusively the occasions for its exercise, is to permit despotism, pure and simple.

The office of the Legislative department is to establish rules for the control of cases subsequent to the rule. It cannot declare what the law was, nor can it execute the statutes it enacts. The rules it establishes govern the men who make them, as well as the rest of the community. It is evident that the legislative power, kept within its true bounds, cannot change the nature of the government.

The office of the Judicial department of the government is to declare what the law was, at any given time, and what the law requires to be done at the time when the case arises. It cannot say what the law shall be, or ought to be, and if its judgments be not voluntarily obeyed, it has not the power to enforce them, without the aid of another department. It has a voice, but no hands; and therefore if kept within its proper bounds, cannot subvert the government.

The Executive department is the hands of the state.

Its office is to execute the requirements and the judgments of the law ; without judicial interpretation, where none is required ; with trial and adjudication, where controversy arises. It can neither declare what the law is, nor what it shall be. It may primarily determine that the occasion for action has arisen, but this decision is at its peril, and subject to revision by the judiciary, upon the demand of any one aggrieved. So that this department, acting within its sphere, cannot overturn the Republic.

To some extent, each department is the aid and servant of both the others. Each department appears to exercise some powers which properly belong to the others. But this confusion is apparent, rather than real—by permission, rather than by usurpation. For example : the legislature permits the courts to make rules of practice, and executive officers to establish methods of procedure ; the courts permit the legislature and executive officers, to make inquiries and determinations in the nature of trials and judgments ; and the executive department appears in some things to be, not a grand co-ordinate department of the government, holding the sheriff's staff and the soldier's bayonet, but a mere creature of the legislature and the courts. But when controversies arise, each department stands revealed in its true rank and dignity. The legislature repeals executive and judicial rules and regulations, and enacts others in their place—the courts declare legislative and executive acts and proceedings unauthorized and void—and the executive power refuses to enforce a statute or a judgment which is forbidden by the constitution. In

cases which are only doubtful, each department should be supported by the others. In clear cases of usurpation, both should oppose the other.

Precedents of usurpation by each department of the government may, doubtless, be found, but a bad precedent cannot change the truth of a principle, however much it may embarrass its action.

XIII.

SPECIAL LEGISLATION.

The proper business of a legislature is, to make laws, not to grant privileges. There should be just and liberal laws for the formation of corporations both private and municipal, but special charters should not be given, except in cases of such extraordinary character and merit that special privileges would be universally approved.

A prohibition of special legislation would change, as by magic, not only the character of the laws, but also the character of the law-makers themselves. It would destroy the lobby. The privileges now sold by corrupt legislators to a few monopolists, it would extend to all whose means, ability and energy might stimulate them to compete for honors, wealth, or influence.

It is useless to attempt to conceal the almost universal contempt into which legislative bodies have fallen; and nothing less than a prohibition of special legislation can enable them to regain their original influence and position.

XIV.

THE INQUEST BY COMMON LAW JURY.

One of the most admirable contrivances of the common law, was the inquest by a jury, carefully selected by

faithful counsel, and sworn to a faithful discharge of their duties in the premises. The attention of modern statute-makers is called to this fact; for, judging from their miscellaneous manufacture of batches of commissioners, and the nature of the duties they impose on boards of supervisors and of aldermen, they need the reminder. The following are examples of questions which might be determined by such inquest, and the judgment of the court thereon, at any term of any common law court, viz. :

The necessity for taking private property for roads and other public uses; and the compensation which ought to be paid therefor.

The amount of money required for various municipal purposes.

The condition of public works, buildings, and institutions; and the manner in which the officers in charge thereof have discharged their duties.

Such inquests, publicly held in open court, would not only ascertain and declare, better than any other means, the real truth of the matters to be investigated; but would also prevent the prevalent bribery and corruption of the *ex parte* commissions which, according to present practices, determine such questions in the back rooms of beer-shops, and other equally convenient places.

XV.

MILITARY TRIBUNALS.

A military tribunal is not a court, in the judicial sense of the term. A trial by such tribunal, is simply an executive inquest, like a sheriff's trial of the right of

property, or a coroner's inquiry. Such inquests are *permitted* by the judiciary, and take place under its supervision. For the *posse comitatus*, and the army, are the same in kind; and force is the servant, not the master. The sheriff, the governor, the president, the general, must protect the people and their rulers from violence, and enforce the mandates of the law. The president, assuming the existence of a state of facts which would warrant it, may in the first instance declare martial law or suspend the *habeas corpus* as an executive act; but the judge, exercising a power which the president does not possess, may sit in judgment on the action of the executive officer, may find judicially that the facts did not exist which would have justified the executive action, and may declare that action unauthorized and void.

The president need not wait for judicial or legislative action till the government is overturned; neither need the judge suffer his power to be usurped by an executive officer, or his functions to be suspended when he is able to cause the process of his court to be executed within his jurisdiction. The judiciary may see a conviction by court martial, and permit the infliction of the penalty of death; but if it should be represented to the judicial authority, that the court martial was proceeding contrary to law, that authority would have the right to interpose, inspect the proceedings, and if erroneous, quash them, and discharge the prisoner. Of course, where no courts exist, or where they have been in fact dispersed, the judicial supervision cannot be exercised, but the abstract principle remains the same. A judge may make a wrong

decision—an executive officer may disregard a judicial order,—the people take the chances of these mistakes; but if an officer will make mistakes, they prefer to have him make them within the limits of his own department.

XVI.

THE APPOINTMENT OF PROVISIONAL GOVERNORS.

The President is the chief executive hand of the nation. It is his duty to see that the laws be faithfully executed. He cannot enact a law, nor can he create an office. But finding the office of governor of a state vacant, and that a rebellion has introduced anarchy so that there are no proper officers to succeed to that vacancy, he may, as an executive act, install, provisionally, a governor *de facto* to hold and exercise the office, till a governor *de jure* shall be ready to receive it from his hands. That provisional governor may, in like manner and for the like purpose, fill all the other offices in the state, for he is the chief executive officer of the state. To this rule there is the exception that the executive cannot appoint provisional officers to enact new laws. The executive protects, but it does not create.

XVII.

THE IMMEDIATE CAUSE OF THE REBELLION—A NEGRO TERRITORY.

The immediate cause of the Rebellion, was the loss of the equilibrium in the Senate. The Southern states had struggled, almost a generation, to preserve their power in that body. The rapid and inevitable increase of Northwestern states, soon made it apparent that there

would be a permanent majority of senators from the free states. Southern politicians had perceived that the moment such a majority, however small, should take the dominion of the Senate, the institution of slavery would be doomed to extermination. The history of the country is a record of the encroachments of free labor on slave territory. The rebellion only precipitated what was inevitable. The relative merits of northern and southern society have been tried by battle, the highest arbitrament known to nations. The people who would not have the negro, have demonstrated their superior power, resources, and glory. The suppression of the rebellion, is a solemn decree against the negro. He has not been able to maintain himself in any free state, and now all the states are free. Nothing remains for him but a Negro Territory. We have given a territory to the Indian; we must provide one for the Negro.

XVIII.

THE EFFECT OF THE WAR ON PARTY POLITICS.

The war will produce, or rather will call into the field, a new race of political leaders. Before the rebellion, it seemed as though the American people had forgotten, both how to command, and how to obey. They elevated knaves, vagabonds, and criminals to office by their votes. They committed the conduct and control of elections to the vagrants, the rabble, and the mob of society. By their action, they practically excluded the wisest and the best men from political conventions and management. All this will be changed. The great generals, and the

great armies that have conquered the rebellion, will carry their military discipline and vigor into political affairs ; and truly great civilians will be found to administer the offices of the Republic.

Men will again be selected as party leaders, because they are above their fellows, not because they are below them. Offices and honors will again seek the men ; and the men when they accept them, will be masters, not mendicants.

The lust of power which led the South into rebellion, and the lust of gain which corrupted the North, will be subdued in the hearts of the people, as they have been overcome on the field of battle. The glory of the first, and the peace of the second generation of the Republic, will return.



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